

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)
3 Chief, Criminal Division

4 CHRISTOPHER D. VIEIRA (CABN 273781)
Special Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-7301
8 FAX: (415) 436-7027
christopher.vieira@usdoj.gov

Attorneys for United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

| | | |
|------------------------------|---|---------------------------|
| 13 UNITED STATES OF AMERICA, |) | No. CR 18-00586 YGR |
| |) | |
| 14 Plaintiff, |) | UNITED STATES' SENTENCING |
| |) | MEMORANDUM |
| 15 v. |) | |
| |) | |
| 16 MALIK SWINTON, |) | |
| |) | |
| 17 Defendant. |) | |
| <hr/> | | |

1 **I. INTRODUCTION**

2 The grand jury indicted Malik Swinton (“Swinton”) on December 6, 2018 for seven counts of
3 wire fraud in violation of 18 U.S.C. § 1343 and one count of aggravated identity theft in violation of 18
4 U.S.C. § 1028A(a)(1). Swinton made his initial appearance on the indictment in Las Vegas, NV on
5 December 17, 2018, and the court released him on a bond that he immediately violated. PSR ¶ 4. The
6 court remanded Swinton into custody on December 20, 2018, and he has remained in custody since that
7 date. *See id.* Swinton pled guilty to one count of wire fraud on May 9, 2019 and will appear for
8 sentencing on July 19, 2019.

9 **II. FACTUAL BACKGROUND**

10 The plea agreement and the PSR each provide detailed overviews of defendant’s offenses and
11 offense conduct. *See* Dkt. No. 19 ¶ 2; PSR ¶¶ 6-24. The government wholly agrees with the factual
12 recitations in those documents and adopts them here.

13 **III. PRESENTENCE REPORT**

14 The government reviewed the PSR prepared by United States Probation Officer Catheryn Grier.
15 The government agrees with the PSR’s Offense Level calculation and further agrees that Swinton should
16 receive a three-level reduction for acceptance of responsibility and timely notification of his intent to
17 plead guilty. The government has no unresolved objections to the report’s factual recitation or
18 recommended supervised release terms.

19 **IV. SENTENCING RECOMMENDATION**

20 The government believes that the parties’ jointly recommended sentence¹ of 37 months in prison,
21 three years of supervised release, restitution, and a \$100 mandatory special assessment reflects the
22 seriousness of Swinton’s offense, will promote respect for the law, will provide just punishment, and
23 will afford adequate deterrence.

27 ¹ Subheading A in Swinton’s sentencing memo references a “37 month split sentence”. Counsel
28 for the parties spoke, and defense counsel clarified that the statement was a typo. Swinton is not asking
the Court to impose a split sentence.

1 A. *The Nature and Circumstances of Swinton’s Offenses Justify the Parties’ Proposed*
2 *Sentence*

3 Malik Swinton submitted fraudulent disability applications to the Department of Veterans
4 Affairs (“VA”), the Social Security Administration (“SSA”), and the Department of Labor (“DOL”). He
5 also persisted in getting those applications approved by appealing when the SSA and the DOL initially
6 denied his fraudulent disability claims. Swinton repeatedly lied about his claimed disabilities, supported
7 his disability applications and appeals with fraudulent letters that he wrote and signed using other
8 people’s names, and continued to lie to the VA, the SSA, and the DOL for years in order to collect his
9 fraudulently-obtained benefits. All told, Swinton’s frauds continued for over 6 years and resulted in
10 over \$630,000 in losses to the government.

11 Fraud schemes reduce the overall public confidence in, and support for, government benefit
12 programs. Stealing from government benefit programs on which millions of people rely is a serious
13 crime that the Court should not treat lightly. The fraud in this case is more insidious than a simple crime
14 against property. Swinton collected benefits that he had no legal right to receive, and his actions
15 resulted in significant losses to the VA, the SSA, and the DOL. Those losses came at a critical time.
16 The U.S. Treasury (the source for VA and DOL benefit funds) has consistently run large annual deficits
17 for years, and since 2010, the SSA has routinely paid more in benefits than it has collected in taxes.² If
18 Congress does not take action, the SSA’s OASDI Trust Fund will be insolvent in 2035 based on current
19 projections.³ Given these facts, defendant’s serious, repeated, and long-term theft from the VA, the
20 SSA, and the DOL warrants a significant sentence.

21 B. *The Parties’ Proposed Sentence is Necessary to Reflect the Seriousness of Swinton’s*
22 *Offense, Promote Respect for the Law, and Afford Adequate Deterrence to Criminal*
23 *Conduct*

24 Given their size, scope, and complexity, the government faces significant challenges in
25 protecting its benefit programs from fraud. Indeed, the government largely relies upon individuals to
26

27 ² <https://www.ssa.gov/oact/trsum/>

28 ³ *Id.*

1 “do the right thing” and be honest in their dealings with federal agencies. The harm Swinton caused to
2 the VA, the SSA, and the DOL will only increase if others believe that they can also fraudulently obtain
3 hundreds of thousands dollars in disability benefits without the threat of significant punishment. *See*
4 *United States v. Brisson*, 448 F.3d 989, 993 (7th Cir. 2006) (“Who knows how many more ‘economic
5 offenses’ would be committed if the tempted knew that the punishment, if caught, would be little more
6 than minimal?”). In addition to promoting respect for the law and providing a just punishment for the
7 offense, the parties’ proposed guideline sentence will demonstrate to the public, to military veterans, and
8 to federal government employees that defrauding government disability programs is a serious offense. It
9 is especially important for defendant’s sentence to promote general deterrence. Because economic and
10 fraud-based crimes are ‘more rational, cool, and calculated than sudden crimes of passion or
11 opportunity,’ these crimes are ‘prime candidate[s] for general deterrence.’” *United States v. Martin*, 455
12 F.3d 1227, 1240 (11th Cir. 2006). The parties’ recommended sentence is sufficient, but not greater than
13 necessary, to reflect the seriousness of Swinton’s criminal conduct and provide a significant deterrence
14 to other individuals who may consider defrauding government disability benefit programs in the future.

15 **V. RESTITUTION**

16 In his plea agreement, Swinton agreed to pay restitution in an amount to be set by the Court at
17 the time of sentencing, but in no event less than \$617,542.77. That total broke down as follows:

- 18 • Department of Veterans Affairs – \$242,148.50 (for losses through April 2019)
- 19 • Social Security Administration – \$98,431.30 (for losses through April 2019)
- 20 • Department of Labor – \$276,962.97 (for losses through March 2019).

21 The SSA suspended Swinton’s benefits after it learned that he was in custody. The VA and the
22 DOL have continued to pay Swinton’s benefits; they are in the process of terminating those benefits in
23 light of Swinton’s guilty plea in this case. Given the payments he received post-plea, the government
24 respectfully requests that the Court order Swinton to pay restitution of \$632,368.34, broken down as
25 follows:

- 26 • Department of Veterans Affairs – \$249,541.62 (for losses through June 2019)
- 27 • Social Security Administration – \$98,431.30 (for losses through June 2019)

- Department of Labor – \$284,395.42 (for losses through June 2019).

VI. CONCLUSION

For the reasons set forth above, the government recommends that the Court impose a sentence of 37 months in prison, three years of supervised release, mandatory restitution of \$632,368.34, and a \$100 mandatory special assessment. This sentence is reasonable and sufficient, but not greater than necessary, to achieve the goals of sentencing.

DATED: July 12, 2019

Respectfully submitted,

DAVID L. ANDERSON
United States Attorney

/s/ Christopher Vieira
CHRISTOPHER VIEIRA
Special Assistant United States Attorney